

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## BENJIMEN ALEXANDER,

CASE NO. C19-5721 BHS

Petitioner,

## ORDER ADOPTING REPORT AND RECOMMENDATION

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## Respondent.

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 8, and

Petitioner Benjimen Alexander’s (“Petitioner”) objections to the R&R, Dkt. 9, motion to amend case caption, Dkt. 12, motion to compel information, Dkt. 13, motion to amend writ of habeas corpus, Dkt. 14, and motion for reconsideration, Dkt. 15.

On August 4, 2019, Petitioner filed a proposed petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. 1. Petitioner raises four grounds for relief in his proposed petition, all of which are premised on the allegation that his confinement is unlawful because he was charged by information, rather than by indictment. *Id.*; *see also* Dkt. 3 (petition for writ of habeas corpus). Petitioner further alleges that Washington State does not have jurisdiction to determine federal constitutional matters. Dkts. 1, 3. On October 3, 2019, Respondent answered the petition. Dkt. 6.

1       On November 18, 2019, Judge Christel issued the R&R. Dkt. 8. In relevant part,  
2 the R&R recommends that Petitioner's petition be dismissed with prejudice as untimely.  
3 *Id.* On December 2, 2019, Petitioner filed objections to the R&R. Dkt. 9. Also on  
4 December 2, 2019, Petitioner filed an untimely reply. Dkt. 10.

5       On December 23, 2019, Petitioner filed a motion to amend case caption, Dkt. 12, a  
6 motion to compel information, Dkt. 13, a motion to amend writ of habeas corpus, Dkt.  
7 14, and a motion for reconsideration, Dkt. 15.<sup>1</sup> On December 17, Respondent responded  
8 to Petitioner's objections to the R&R and his untimely reply. Dkt. 11. On January 2,  
9 2020, Respondent responded to Petitioner's motions. Dkt. 16.

10       The district judge must determine de novo any part of the magistrate judge's  
11 disposition that has been properly objected to. The district judge may accept, reject, or  
12 modify the recommended disposition; receive further evidence; or return the matter to the  
13 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

14       In this case, Petitioner argues that his petition is an original civil action and  
15 implies that it is not subject to the one-year limitations period for federal habeas petitions  
16 prescribed by the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C.  
17 § 2241 *et seq. See, e.g.*, Dkt. 9 at 1–4. Petitioner, however, readily admits he is  
18 incarcerated under a state court judgment and that he challenges that judgment pursuant  
19 to the federal habeas statute, 28 U.S.C. § 2254. *Id.* at 1 ("Petitioner has submitted a Writ  
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21       <sup>1</sup> Although each document is handwritten and thus contains slight differences, Petitioner's  
22 objections are nearly identical to his motion for reconsideration and his untimely reply. Compare Dkt. 9  
with Dkt. 10 and Dkt. 15.

1 of Habeas Corpus pursuant to Title 28 U.S.C. § 2254.”); *see also* Dkt. 3. Thus, Petitioner  
2 fails to convince the Court that AEDPA’s limitations period is not applicable to his  
3 habeas petition. Because Petitioner filed his petition more than one year after his  
4 judgment of conviction became final, *see* Dkt. 8 at 2–4, the Court agrees with the R&R  
5 that the petition is untimely. Thus, Petitioner’s objection on this basis is denied.

6 Petitioner lodges numerous other objections that do not alter this Court’s  
7 conclusion that his petition is (1) untimely and (2) subject to the one-year limitations  
8 period set by AEDPA. Therefore, the Court having considered the R&R, Petitioner’s  
9 objections, Petitioner’s motion to amend case caption, motion to compel information,  
10 motion to amend writ of habeas corpus, motion for reconsideration, and the remaining  
11 record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) Petitioner’s federal habeas petition, Dkt. 3, is **DISMISSED with**  
14 **prejudice**;
- 15 (3) A Certificate of Appealability is **DENIED**;
- 16 (4) Petitioner’s remaining motions, Dkts. 12, 13, 14, 15, are **DENIED as**  
17 **moot**; and
- 18 (5) The Clerk shall enter **JUDGMENT** and close the case.

19 Dated this 14th day of January, 2020.

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BENJAMIN H. SETTLE  
United States District Judge